

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty and Jeopardy Assessments,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

These amendments are proposed as a result of 2011 Iowa Acts, Senate File 517.

Item 1 adds new subrule 10.2(31) to provide the rate of interest on interest-bearing taxes for the calendar year 2012.

Item 2 amends subrule 42.22(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital funds for investments made on or after January 1, 2011, for Iowa individual income tax.

Item 3 adds new subrule 42.22(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa individual income tax.

Item 4 amends the implementation sentence for rule 701—42.22(15E,422).

Item 5 amends subrule 52.21(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital funds for investments made on or after January 1, 2011, for Iowa corporation income tax. This change is similar to the change in Item 2.

Item 6 adds new subrule 52.21(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa corporation income tax. This change is similar to the change in Item 3.

Item 7 amends the implementation sentence for rule 701—52.21(15E,422).

Item 8 amends subrule 58.11(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital funds for investments made on or after January 1, 2011, for Iowa franchise tax. This change is similar to the changes in Items 2 and 5.

Item 9 adds new subrule 58.11(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa franchise tax. This change is similar to the changes in Items 3 and 6.

Item 10 amends the implementation sentence for rule 701—58.11(15E,422).

The amendments are intended to work in conjunction with Economic Development Authority 261—Chapters 115 and 116 published under Notice of Intended Action herein as **ARC 9845B**.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 19, 2011, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules

Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 6, 2011. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 6, 2011.

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax credits may positively impact job and economic growth for businesses in the state of Iowa.

These amendments are intended to implement Iowa Code sections 15E.42, 15E.43, 422.23 and 422.60 as amended by 2011 Iowa Acts, Senate File 517; 2011 Iowa Acts, Senate File 517, section 40; and Iowa Code section 421.7.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 10.2(31):

**10.2(31) Calendar year 2012.** The interest rate upon all unpaid taxes which are due as of January 1, 2012, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2012. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2012. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2012.

ITEM 2. Amend subrule 42.22(1) as follows:

**42.22(1) Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.** See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the Iowa capital investment board or the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if an individual taxpayer makes an equity investment during the 2012 calendar year, the individual taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. However, if the taxpayer dies prior to redeeming the tax credit, the remaining tax credit may be redeemed on the decedent's final income tax return. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax

year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in a community-based seed capital fund or equity investments made in a qualifying business on or after January 1, 2004, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

ITEM 3. Adopt the following new subrule 42.22(4):

**42.22(4)** *Innovation fund investment tax credit.* See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in the form of cash in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if an individual taxpayer makes an equity investment during the 2012 calendar year, the individual taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2012 and the \$8 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 4. Amend rule **701—42.22(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections section 15E.43; as amended by 2011 Iowa Acts, Senate File 517; sections 15E.51, 15E.66, and 422.11F, and 422.11G; and 2011 Iowa Acts, Senate File 517, section 40 sections 15E.51 and 422.11G as amended by 2010 Iowa Acts, Senate File 2380.

ITEM 5. Amend subrule 52.21(1) as follows:

**52.21(1)** *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made

on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the Iowa capital investment board or the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the corporation taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 6. Adopt the following **new** subrule 52.21(4):

**52.21(4) Innovation fund investment tax credit.** See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the corporation taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ending on December 31, 2012, makes an equity investment in December 2012 and the \$8 million cap for the fiscal year ending June 30, 2013, had already been reached,

the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 7. Amend rule **701—52.21(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~45E.43 and 15E.66~~; sections ~~15E.51, 15E.66, and 422.33(13)~~ 15E.42, 15E.43 and 422.33 as amended by ~~2010~~ 2011 Iowa Acts, Senate File ~~2380~~ 517; and 2011 Iowa Acts, Senate File 517, section 40.

ITEM 8. Amend subrule 58.11(1) as follows:

**58.11(1)** *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the Iowa capital investment board or the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

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individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 9. Adopt the following **new** subrule 58.11(4):

**58.11(4) *Innovation fund investment tax credit.*** See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

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ITEM 10. Amend rule **701—58.11(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~15E.43 and 15E.66~~; sections ~~15E.51, 15E.66, and 422.60(5)~~ 15E.42, 15E.43 and 422.60 as amended by ~~2010~~ 2011 Iowa Acts, Senate File ~~2380~~ 517; and 2011 Iowa Acts, Senate File 517, section 40.